

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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YARON UNGAR, et al

CA No. 00-105 L

v

PROVIDENCE, RI
22 AUGUST 2003

PALESTINIAN AUTHORITY, et al

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BEFORE MAGISTRATE JUDGE DAVID L. MARTIN

APPEARANCES:

FOR THE PLAINTIFF:

DAVID J. STRACHMAN, ESQ.
321 S. Main St.
Suite 400
Providence, RI 02903
351-7700

FOR THE DEFENDANT:

RAMSEY CLARK, ESQ.
LAWRENCE SCHILLING, ESQ.
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U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

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DEMING SHERMAN, ESQ.
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2800 Financial Plaza
Providence, RI 02903
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1 22 AUGUST 2003

2 THE COURT: This is the matter of the Estate
3 of Ungar, et al vs. The Palestinian Authority, et al,
4 Civil Action 00-105 L.

5 Before the Court this morning are
6 plaintiffs' motion for judgment by default pursuant to
7 Federal Rules of Civil Procedure 55(b)(2) against The
8 Palestinian Authority and the Palestine Liberation
9 Organization. Also consideration of plaintiffs'
10 attorney's fees in regard to defendants' failure to
11 respond to discovery requests.

12 The attorneys will identify themselves.

13 MR. STRACHMAN: David Strachman for the
14 plaintiffs.

15 MR. CLARK: Ramsey Clark with Deming Sherman
16 and Larry Schilling for the defendant.

17 THE COURT: Before we begin the hearing, the
18 Court wishes to place on the record some information as
19 to how we come to this point.

20 On July 14, 2003, the Court conducted a
21 hearing which considered plaintiffs' motion pursuant to
22 Federal Rules of Civil Procedure 37(b)(2) for a
23 judgment by default against defendant PA, and for other
24 relief, which was filed on February 12, 2003. I refer
25 to this motion as being plaintiffs' first motion for

1 default judgment.

2 Also considered was plaintiffs' motion for
3 judgment by default against PA and PLO, and for other
4 relief for refusal to submit to depositions which was
5 filed on April 9, 2003. I refer to this motion as
6 plaintiffs' second motion for default judgment.

7 Prior to taking up those motions on July
8 14th, the Court asked counsel for plaintiffs if the
9 filing of the third motion for default judgment, which
10 is the motion that I have announced for hearing this
11 morning, a motion which at the time of the July 14th
12 hearing had not yet been referred to this Magistrate
13 Judge. I asked Mr. Strachman if the filing of that
14 motion made it unnecessary for the Court to rule upon
15 the first two motions for default judgment. My
16 recollection is that Mr. Strachman responded no, that
17 the matter could move on parallel tracks, and the
18 Court, upon reflection, agreed with that assessment and
19 denied the defendants' motion for a continuance of the
20 hearing, and heard argument on plaintiffs' first and
21 second motions for default judgment.

22 At the conclusion of the hearing, the Court
23 stated that it would take the matters under advisement
24 and issue a Report & Recommendation.

25 On July 22, 2003, the Court received a

1 letter from plaintiffs' counsel, Mr. Strachman. In the
2 letter, plaintiffs request that to the extent the
3 Report & Recommendation on the first and second motions
4 for default judgment addresses the matter of personal
5 jurisdiction, the plaintiffs requested that the Court
6 consider documentation which plaintiffs had submitted
7 as part of plaintiffs' third motion for default
8 judgment.

9 The very next day, July 23, 2003, Judge
10 Lagueux referred plaintiffs' third motion for default
11 judgment to this Magistrate Judge for a Report &
12 Recommendation.

13 In light of the request contained in
14 Mr. Strachman's letter of July 23rd -- I may have the
15 date wrong because I received the letter on July 22nd.
16 I'm referring to the letter I received from
17 Mr. Strachman on July 22, 2003. In light of that
18 letter, and the referral of plaintiffs' third motion
19 for default judgment, the Court wrote to counsel on
20 July 25, 2003, stating that in light of these
21 developments, the Court would conduct a hearing on
22 plaintiffs' third motion for default judgment on August
23 15th, and then write a single Report & Recommendation
24 which addressed all three motions for default judgment.

25 Mr. Schilling wrote to the Court on July 28,

1 2003 stating that Mr. Clark was unavailable on August
2 15, 2003, and requested that the hearing be scheduled
3 for a date after August 20th. Mr. Strachman objected
4 to a delay and suggested an earlier date of July 30th.
5 The Court subsequently responded to counsel that the
6 hearing would be held today, indicating that the date
7 suggested by Mr. Strachman of July 30th was not
8 available for the Court.

9 I simply wanted to place that on the record,
10 gentlemen, to explain how we are convening again for
11 another hearing after I had announced at the last
12 hearing that I would be writing a Report &
13 Recommendation which would address the first two
14 motions for default judgment.

15 Having placed that on the record, I'll now
16 take up -- we'll proceed this morning first with the
17 hearing on the motion which I have identified as being
18 plaintiffs' third motion for default judgment. We'll
19 hear argument on that, then we'll take up the matter of
20 the attorneys' fees that are also scheduled for
21 consideration this morning.

22 Before I do that, the defendants,
23 Palestinian defendants, have filed a motion to exceed
24 page limits for exhibits. The defendants filed an
25 opposition to this motion which we are hearing this

1 morning, in their memorandum referenced some exhibits
2 which were not attached, and the Court was subsequently
3 informed that the reason they were not attached is they
4 exceeded the page limits, which the Court had
5 established, but which can be waived upon motion when
6 granted by the Court.

7 Mr. Strachman, did you want to be heard on
8 their request to exceed the page limit?

9 MR. STRACHMAN: No, your Honor.

10 THE COURT: All right. The Court will grant
11 the Palestinian defendants' motion to exceed page limit
12 for exhibits and will consider the exhibits which they
13 have submitted in connection with their memorandum in
14 opposition to the plaintiffs' third motion for default
15 judgment.

16 All right, with that, I'll hear from
17 Mr. Strachman on the plaintiffs' third motion for
18 default judgment.

19 MR. STRACHMAN: Your Honor, in light of the
20 totality of the proceedings in this matter, and
21 especially Judge Lagueux's directives on July 30th
22 where he indicated very clearly that the only thing
23 left in this case is really the assessment of damages
24 against the Palestinian defendants. Plaintiffs wrote
25 to the defendants. A copy of a letter to them was

1 attached to documents which we delivered to the Court
2 yesterday. That letter of mine was July 28, 2003,
3 suggesting that in order to relieve the Court of having
4 to determine whether the defendants have the right to
5 cross-examine, or examine the witnesses that were
6 presented last June, that we would extend the
7 opportunity even without suggesting that they have the
8 right to, we gave them the opportunity to depose,
9 cross-examine in Israel, in America, via telephone, any
10 method of their choosing, during the month of August.
11 We received a letter the very next day from
12 Mr. Schilling indicating that he would bring the matter
13 up immediately with Mr. Clark, and we have not heard
14 since whether they choose to do so. So, therefore, we
15 would like to very simply suggest to the Court that the
16 present motion which was filed prior to your Honor's
17 July 3 Report & Recommendation concerning damages on
18 Hamas, be simply applied here. I think, so it goes
19 without saying, but just to be clear, I'll say it, the
20 motion that we filed that's before the Court today, we
21 referenced all the documents, the damage memo, the
22 post-trial briefs, et cetera. A month later your Honor
23 rendered a decision, so we would ask that we simply
24 apply that damage calculation to the present case.

25 We have not received a substantive response

1 from the defendants. It's almost 30 days since I wrote
2 the letter to them making my clients and the witnesses
3 available to them. So, therefore, I respectfully
4 request that the Court pose to them the question today,
5 do they want to present evidence in the form of
6 cross-examination or in the form of, you know,
7 recalling, if you will, our witnesses. And, if not, I
8 think that should end the matter. And, therefore,
9 based on what we've written in our briefs, very clearly
10 the Court has personal jurisdiction.

11 I think it's very clear who Mr. Rockman is.
12 He held himself out very clearly in his own biography
13 as the PA representative, as well as the PLO
14 representative. The Court clearly has subject matter
15 jurisdiction over this case, and I think it's sort of a
16 fairly simple exercise at this point, having been
17 defaulted on three different grounds, having Judge
18 Lagueux last month -- the hearing was on July 30, I
19 believe, approving your Report & Recommendation
20 concerning the default on each of those grounds. So I
21 think the matter now is simply to, you know, enter
22 final judgment and use the damage calculation
23 previously utilized.

24 We stress that the virtual identical
25 documents that were submitted to the Court previously

1 concerning the second, I believe, motion to dismiss,
2 should be utilized in this case to establish the
3 preponderance of the evidence concerning personal
4 jurisdiction. There is no contradiction at all
5 provided to any document that we provided with the
6 exception of Mr. Rahman's own declaration which we
7 provided to the Court in support of our motion.
8 Mr. Rahman's declaration indicates that he is not a
9 representative to the PA, and he does that even though
10 his own biography indicates otherwise. If the Court
11 would note at the very top of the document, the
12 biography, it is very clear that the fax number that it
13 came from, although it's cut off somewhat, the fax
14 number came from the PLO and PA office in Washington.

15 THE COURT: Mr. Strachman, which exhibit are
16 you referring to, please?

17 MR. STRACHMAN: I'm referring to Exhibit B.

18 THE COURT: You're saying there's a fax
19 number on this document somewhere?

20 MR. STRACHMAN: At the very top, your Honor,
21 there is an indication of the date and the time -- it
22 is cut off, but the fax number can clearly be made out,
23 at least in part. And if the Court turns to
24 Mr. Rahman's very own declaration to the Court, which
25 we presented as Exhibit M, the Court will note on the

1 very first page, at the very top, that the numbers are
2 identical, indicating --

3 THE COURT: Mr. Strachman, I'm going to have
4 my clerk show you my copy of the biography, Exhibit B,
5 and you tell me, or point out on that page where is the
6 fax number you are referring to.

7 MR. STRACHMAN: I'm sort of confused, Judge.
8 The words that we have are a little different so, if I
9 could, present to the Court --

10 THE COURT: Would you show that document,
11 however, to opposing counsel first?

12 MR. STRACHMAN: I believe they have the
13 exact (coughing) your Honor, because it was attached to
14 all the other documents. And it always has, Judge.
15 And it's cut off, (inaudible). And there's a little
16 telephone symbol next to the fax number. And if your
17 Honor turns to Exhibit M, toward the very top, and
18 that's Mr. Rahman's declaration that was provided by
19 the defendants in their motion, the numbers are
20 identical. Even if we didn't have that, Judge, what we
21 have is in the documents that we provided to the Court
22 yesterday, for instance, which are eight documents, six
23 of which indicate very clearly that Mr. Rahman holds
24 himself out as working for the PA and, in fact,
25 testified in Congress before the Senate that his role

1 was a dual role, both the Chief of the PLO in the
2 United States and the PA.

3 And lastly, in regard to that issue, Judge,
4 because -- and I raise this because these are the
5 objections. There are basically two objections
6 provided to us Wednesday evening in the defendants'
7 response to our motion. And they raise issues about
8 his own biography and his own -- and his
9 representations about who he is and who he works for,
10 but what's interesting is they don't come out and say
11 "this is not his biography. We have no where from
12 Mr. Rahman indicating that this is a fabrication, or
13 was made up, or he never used this."

14 And, in fact, what's interesting, and one of
15 the reasons we provided to the Court all of the other
16 interviews with ABC, NBC, CNN, et cetera, is because
17 all of these representations about Mr. Rahman in many
18 cases quote directly from his own biography. And there
19 are dozens more. And it's very clear who he works for,
20 what he does. And with that, your Honor, I think I
21 will rest.

22 THE COURT: Mr. Strachman, do you want to
23 say anything in response to the argument made by the
24 defendants in their memorandum, at the bottom of page 5
25 and the top of page 6 of their memorandum, referring to

1 the Klinghoffer decision in where the Court in
2 Klinghoffer said that -- let me read from defendants'
3 memorandum. "In Klinghoffer, in actions against the
4 PLO commenced after its effective date. The statute
5 was found to deprive plaintiffs of the 'benefit of a
6 presumption of continuity' of PLO activities bearing on
7 personal jurisdiction. See Klinghoffer, 795 F.Supp.
8 115, warranting dismissal of the actions for lack of
9 personal jurisdiction."

10 I gather from the memorandum, the argument
11 the defendants are making is that the plaintiffs in
12 this case are asking the Court to find, or infer, that
13 there's been a continuity that, in fact, the Court in
14 the Klinghoffer case in the opinion just quoted from,
15 rejected. Do you want to respond to that?

16 MR. STRACHMAN: Part of the continuity, and
17 part of the difference, your Honor, is that in 1994,
18 the President allowed the PLO to operate freely in the
19 United States, and they lifted any restrictions
20 concerning the PLO. And I have a copy of the
21 Presidential determination, if I could submit to the
22 Court and to the defendants, and this declaration, your
23 Honor, (not at the microphone) indicates clearly that
24 the PLO has the right to operate without any of the
25 restrictions that were -- that they were bound by prior

1 to that. And that is, to the best of my knowledge,
2 that has been continued every 6 month period since
3 1994. I'm sort of surprised to see that representation
4 in the defendants' brief because this statute obviates
5 any issue there. We know they have tremendous
6 systematic activities in the United States. It's been
7 proven in all the other documents that we have in this
8 court -- that we've shown in this court previously.
9 Funds, the fund raising, the hiring of law firms for
10 pension benefits, the hiring of press people, and
11 representative such as Mr. Abbington, et cetera, the
12 propaganda or informational activities of Mr. Rahman,
13 Mr. Jilani, and others, indicating that they are very
14 present in the United States, the renting of offices,
15 the deposits, in at least, I believe, four banks, of at
16 least \$18 million, the lawsuits that they participate
17 in, in this country.

18 I would also ask, Judge, respectfully, and I
19 know there was an issue, you know, in New York the
20 prior week, but we received their brief Wednesday
21 evening. I'd like to have a short opportunity until
22 next Friday to file a reply and maybe address in more
23 particular some of these issues.

24 THE COURT: It is true that the defendants'
25 objection was received a date later than what the Court

1 specified, although I find there was a valid
2 explanation because of the electrical failure that
3 affected the northeastern part of much of this country.
4 I'll grant your request. You may file a brief reply
5 not later than next Friday, Mr. Strachman. Thank you.
6 Have you completed your remarks?

7 MR. STRACHMAN: Yes, your Honor. If I could
8 just ask, in terms of that brief to not delay if we
9 were to exceed 10 pages, could we include in the order
10 that we would have a right to exceed that? We'd like
11 to provide some exhibits, as well, and I don't want to
12 file it and then make a request. That might take a
13 couple of days to grant.

14 THE COURT: If you contact my clerk
15 Miss Saucier that you are filing the response and it
16 exceeds the page limit, you prepare a motion so
17 requesting and I'll grant it.

18 MR. STRACHMAN: Thank you.

19 THE COURT: It doesn't have to be elaborate.
20 It can be a one-page motion. You request permission,
21 and just get it to my clerk and I'll grant it.

22 MR. STRACHMAN: Thank you.

23 THE COURT: Mr. Clark, are you going to
24 argue for the defendants this morning?

25 MR. CLARK: Yes, your Honor. Thank you.

1 I'll address this last issue first while I have it in
2 mind, since it just came up.

3 My understanding is that the PLO has
4 authorized only one office in the United States, and
5 that under the Foreign Missions Act, and it is called a
6 Mission. It's PLO and it's not PNA. And it's severely
7 circumscribed. It does require 6 month renewals.

8 We would ask leave to respond to any
9 additional materials or argument on that subject that
10 were submitted by the plaintiffs, and ask for the same
11 amount of time to respond to what they present, that
12 they have been given to make their presentation.

13 THE COURT: I have to say, Mr. Clark, I'm a
14 little reluctant to grant that request simply because
15 there has to be an end to this at some point. We have
16 plaintiffs' third motion for default judgment. The
17 defendants have filed an objection. It was filed a few
18 days beyond the date that I specified. And
19 Mr. Strachman's request for some additional time to
20 respond, struck me as not unreasonable under the
21 circumstances. Had the memorandum been filed on the
22 date I specified, I would not be inclined to allow him
23 to file another response believing that he had enough
24 time to prepare and make his response this morning.
25 I'm allowing him to do so because I think his time was

1 constricted. Your request that you now be allowed to
2 file a response to his further response raises the
3 prospect that Mr. Strachman will then say that he wants
4 to file another response. So I'm a little reluctant to
5 start down this path.

6 MR. CLARK: Well, this came up when the
7 Court asked a good question, and he presented a
8 document that he had in his hand, or at least on the
9 desk. We had no prior notice of it, and we don't know
10 what he's going to present now. To have no opportunity
11 to respond to it would seem not only highly prejudicial
12 but ultimately error. But that's --

13 THE COURT: Well, let me make a ruling on
14 this. You're requesting that you be allowed to file a
15 response to Mr. Strachman's further response that is
16 due -- his is due next Friday. All right, Mr. Clark,
17 I'm going to grant that request but here's the limits
18 on it. It's not to exceed 5 pages, and I'm really not
19 looking for any exhibits. If it's absolutely
20 necessary, 5 pages of exhibits. And it will be due one
21 week from after Mr. Strachman's response.
22 Miss Saucier, what's the date next Friday? Is that the
23 29th?

24 THE CLERK: Yes, it is, your Honor.

25 THE COURT: All right, so Mr. Strachman's

1 response is due on August 29th, and the defendants'
2 response, if they wish to file one, to Mr. Strachman's,
3 will be due one week later. What date is that, please?

4 THE CLERK: September 5th.

5 THE COURT: September 5th.

6 MR. CLARK: We appreciate that, your Honor.
7 There is one other matter that's related to that. He
8 may proffer documents to which we may need to proffer
9 other documents, so we'd like also leave to proffer
10 those documents over and above our 5 page limitation.

11 THE COURT: Mr. Clark, you can make that
12 request. I can tell you it will be very difficult to
13 persuade me to grant that request, but I won't prohibit
14 you from making it. I've set the limits, and if you
15 want to, at the time, file a request to exceed those
16 limits, you may do so. But I'm telling you now, I'm
17 strongly inclined to adhere to the limits that I've set
18 for the reasons I've stated. We need to have this
19 matter come to a conclusion, and if each side keeps
20 filing further responses, it won't come to a
21 conclusion. So, I won't prohibit you from making a
22 request to exceed the limits I just set, but I'm giving
23 you fair warning you face an extremely difficult
24 prospect of persuading me that I should exceed those.
25 So, let's get on with the argument.

1 MR. CLARK: I'm just going to make a couple
2 of observations about the situation in which the
3 defendants find themselves.

4 They have urged heretofore on the Court the
5 impossibility of defending under present circumstances.
6 Reading the New York tabloid headlines at Penn Station
7 this morning, and not believing that there are degrees
8 of impossibility, I say, if anything, the papers today
9 suggest that it's tragically been nothing that the PLO
10 or the PNA ever wanted more impossible than ever to
11 comply.

12 While we're technically on the third motion
13 for default, which is something of a mystery in itself
14 as to why there should be and why we should be forced
15 to answer three separate motions for default, on the
16 issue of failure to answer, our presentation before
17 suggested that answering would serve no purpose even if
18 it could readily be done because we could not then
19 defend the case. We could not then go forward with
20 discovery because of the chaos and violence in which
21 the defendants live in their own land.

22 We also regret not having had the
23 opportunity to exhaust the issue of immunity before
24 going forward.

25 Now, on where we are today, let me say that

1 there are two affidavits, not one, before the Court,
2 that under penalty of perjury state that there is no
3 PNA office in the United States, that there are many
4 reasons, in law and otherwise, that there are not,
5 going back as far as 1993, in the Oslo Accords which
6 were signed in Washington. The PNA has been
7 prohibited, as it is under the roadmap, the current, if
8 it's still going on, effort to resolve this
9 generation's-long conflict. The PNA is not authorized
10 to have an office in the United States, and does not
11 have one. And both Mr. Jilani, who is the deputy
12 permanent observer of Palestine at the United Nations,
13 since 1988, as I recall, the original observer office
14 was PLO, but as progress toward peace was made in those
15 years, the United Nations changed the nature of the
16 office. It is no longer PLO. PLO has not only been
17 removed from the title, it's been removed from the
18 office. It's an office that represents the Palestinian
19 people, and Palestine, in the expectation that the next
20 step will be membership in the United Nations for
21 Palestine.

22 Mr. Abbda Rahman, Rahman means power, or the
23 most merciful in Arabic, and for Muslims it's been bad
24 taste to say someone's name is Rahman. Abbda means
25 servant of. So the two always go together as a name

1 that means servant of God, not God. But he has given
2 an affidavit. It's before this Court. It's the only
3 conscious formal statement under penalties of perjury
4 that is made before this Court in which he says that he
5 does not represent the PNA, and could not represent the
6 PNA. That doesn't mean he can't state the position of
7 the PNA or the Russian federation, or Cambodia. It
8 just means that he's not the PNA or a representative of
9 the PNA, and wouldn't be a part of the mission that's
10 authorized under the Foreign Missions Act of the United
11 States of the PLO in Washington, if he were a member, a
12 representative of the PNA. So all the statements with
13 Geraldo Rivera and the New York Times and his purported
14 biography, this one page statement, is to Abbda
15 Rahman's background, that don't make him a
16 representative of the PNA, and do not overcome, or
17 begin to overcome the weight of a sworn statement under
18 penalties of perjury, that he is not such a member,
19 that he's not such a representative.

20 THE COURT: Mr. Clark, I've read your
21 memoranda, and I thought about that fact that this is
22 an affidavit, or declaration, which is executed by
23 Mr. Abbdal Rahman, and he says it's under penalty of
24 perjury, and that I have that on the defendants' side.
25 And on the plaintiffs' side there are news media

1 documents where I believe he is identified as being a
2 representative of the PNA, and the defendants argue
3 that he is not responsible for this, in essence. It's
4 not out of his mouth, these are what other people are
5 saying. That's the argument you're making, or one of
6 the arguments you make, am I correct?

7 MR. CLARK: Yes, that's correct. I don't --
8 if I tried to list all the things I've been called, or
9 been introduced, polite and impolite, we'd be here all
10 day. They introduce him in a way that gives their
11 program the highest level of interest, so they
12 overstate it, but he is not, and they can't make him
13 so, and his own statement that he is so can't make him
14 so --

15 THE COURT: Has he ever corrected this
16 misidentification that apparently has happened on a
17 number of occasions that you're aware of? Was there
18 ever a letter to the editor saying that in the
19 interview that you published of me yesterday I'm
20 described as being a representative of the PNA and want
21 to make clear I am not? Is there any knowledge that
22 he's ever done that?

23 MR. CLARK: I don't know of any. I'd be
24 somewhat surprised. But I think in the world of
25 international diplomacy, and with the great difficulty

1 that Palestine has in getting its message out, which is
2 a minor way to put it, that any accreditation anybody
3 wants to give you, whether it's true or false, that
4 makes it seem that there is a Palestine and it is
5 speaking out, is helpful to the cause. That may sound
6 lacking in candor or (inaudible) somehow or other, but
7 it doesn't make him a representative of the PNA. If
8 the United States Government thought he was a
9 representative of the PNA, he'd be out of business.
10 The same would be true at the United Nations. It's
11 very clear at the United Nations that the PNA is not
12 represented there by Al Kidwar, Ambassador Kidwar, nor
13 is the PLO, nor can you be served there.

14 So on the subject of service, there's no
15 service on the PNA. There's no valid service at the
16 United States mission office. There's a disputed fact
17 as to whether there was service on Abdal Rahman at the
18 Washington office, but there could not have been
19 service there on him or anybody else, on the PNA,
20 because there is no one there who could accept service
21 for the PNA, and there's considerable doubt under the
22 Foreign Missions Act as to whether you can serve the
23 chief official of the Mission for the purposes of
24 domestic litigation between the United States.

25 So, you know, it may be, as Judge Lagueux

1 found, if the standard, and as your Honor used in a
2 default in Hamas, and in the damages in Hamas, if prima
3 facie is the standard which all inferences go in favor
4 of (inaudible) and you may have law of the case anyway,
5 --

6 THE COURT: I'm sorry, the last --

7 MR. CLARK: You may have law of the case,
8 anyway, Judge Lagueux having decided way back on the
9 12(b)(1) motion that there was service and there were
10 minimum contacts. On minimum contacts, there's really
11 no evidence before you that goes beyond, as far as I
12 can tell, the Klinghoffer case. And not only was
13 Klinghoffer before the magic date you refer to in 1988,
14 but the restrictions on -- well, they fluctuate. The
15 restrictions on what the Mission can do are as tight
16 now as they've ever been. So the idea that their
17 activities, they're not part of the Mission's proper
18 conduct, which we submit includes talking to the public
19 and talking to the press about the Mission's work,
20 every other Mission does it, and I think the Mission of
21 Palestine has that equal right. It's been minimal
22 under any circumstances. Travel is extremely difficult
23 for them. Just getting in and out of the country is
24 extremely difficult. Not because of the UN, because
25 under the (inaudible) agreement they have a right to

1 come in and out, but because of the difficulties with
2 the United States which superimposes visa notification
3 and granting requirements that make it all very
4 difficult for them.

5 So that minimum contacts can't be proved by
6 an assumption of continuity. And you'll recall that in
7 Klinghoffer, Judge Stanton ruled that if there was such
8 a presumption, it was cut off by the ATA. So there's
9 neither service nor minimum contacts that can be
10 established against the PNA because it's not here, has
11 no agent for service. There's been no service on any
12 agent, or against the PLO because of the questions
13 about service. When you read Abda Rahman's affidavit
14 on that issue, you see that he's in direct conflict
15 with the process server. But, in addition, to not
16 being a representative of the PNA, as a head of the
17 Mission under the Foreign Missions Act, there's a
18 serious question as to whether he can even be served
19 while he's acting in that capacity. That's basically
20 our submission.

21 THE COURT: All right. Mr. Clark, before
22 you sit down, what is your position regarding the offer
23 by the plaintiffs that the defendants be allowed to
24 depose the persons who testified at the damages hearing
25 involving Hamas? Mr. Strachman indicates that that

1 offer was made to the defendants in a letter some, I
2 guess, 3 weeks ago. Is that right, Mr. Strachman,
3 about 3 weeks ago?

4 MR. STRACHMAN: A little bit more, but I
5 think a copy of it, Judge, was July 28th. A copy was
6 submitted to the Court yesterday in the package that we
7 delivered.

8 THE COURT: The first question, have you
9 responded to that letter?

10 MR. CLARK: No, your Honor.

11 THE COURT: Do you intend to respond to the
12 letter?

13 MR. CLARK: Well, we can respond right now.
14 I was in El Salvador at the time. I came back in over
15 the weekend and left for Europe, and out of courtesy,
16 we should have responded. But I think the response is
17 manifest. We did not participate in the hearing on
18 default and damages for Hamas, and we do not intend to
19 participate. Our instructions have been that we would
20 not participate. We informed this Court on April 1st
21 that those were our instructions, and it's been
22 reinformed a couple of times. So it ought to be pretty
23 clear that as gracious as the offer seems, it was a
24 meaningless offer. And while courtesy would indicate
25 that you respond to a meaningless offer, the

1 circumstances didn't warrant it until it was too late.
2 But we do not seek to examine any of their witnesses if
3 they appear and if they don't appear, because our
4 instructions are that we should not participate in the
5 proceedings until there's been a final decision on
6 immunity.

7 THE COURT: All right, Mr. Clark. Thank you
8 for that candid statement. We'll now proceed to the
9 matter of the attorney's fees. In compliance with the
10 Court's directives, Mr. Strachman submitted
11 documentation in support of his request for attorney's
12 fees. Mr. Strachman, is there anything further you
13 wish to add to that list?

14 MR. STRACHMAN: No, your Honor.

15 THE COURT: Mr. Clark, does the defense wish
16 to offer any argument regarding the request for
17 attorney's fees?

18 MR. CLARK: Your Honor, I'm initially
19 puzzled about the reason for addressing attorney's fees
20 piecemeal under the statute on which the action is
21 brought.

22 THE COURT: Your perhaps suggesting that if
23 the Court goes ahead and -- you aren't suggesting this,
24 but there's an alternative thought that if the Court
25 goes ahead and enters default judgment, the plaintiffs'

1 are entitled to attorney's fees, and presumably the
2 attorney's fees would encompass these attorney's fees.
3 Is that what you have in mind?

4 MR. CLARK: It would be subsumed in the
5 overall attorney's fees, or I assume you wouldn't grant
6 the same fees twice, for the same act. So I was
7 puzzled.

8 THE COURT: Well, it's a point that after
9 the fact occurred to the Court, quite frankly,
10 Mr. Clark. The reason the Court put it down was
11 because I had stated that I would be addressing it at
12 past hearings, and on at least once, if not twice, I
13 neglected to do so, and the Court became concerned that
14 the matter was rapidly fading in the past and would not
15 be addressed. And also, I have to say there's no
16 guarantee that the Court will actually find in favor of
17 the plaintiffs. But apart from that, the Court made an
18 independent judgment that as to what has happened in
19 the past, defendants' conduct was sufficient to entitle
20 the plaintiffs to attorney's fees. So even if the
21 Court were to be persuaded that the plaintiffs were not
22 entitled to the default judgment they seek, and are not
23 entitled to attorney's fees for this entire action, as
24 opposed to this part of the action, the Court's already
25 made a determination that they're entitled to

1 attorney's fees. That was the Court's thinking, but I
2 recognize if it comes out the other way, yes, they are
3 subsumed. But the Court felt it did not want more time
4 to pass without having these attorney's fees at least
5 considered at a hearing, and I recognize they may be
6 subsumed within the larger request for attorney's fees,
7 but that's why we're hearing it this morning.

8 MR. CLARK: There's an application in the
9 First Circuit on the interlocutory appeal for
10 attorney's fees. I don't remember the amount, several
11 thousand dollars, or something like that, and costs,
12 and the attorney's fees, and you recall the decision of
13 the First Circuit. The decision on attorney's fees was
14 to deny them. And I (inaudible) speculate about the
15 reasons, but when you just look at the amount of the
16 awards in Hamas, and consider the psychological impact
17 on the people of Palestine who don't make on the
18 average a thousand dollars a year, it's very difficult
19 to believe that anything except the United States is
20 seeking to destroy their economic survival because
21 they're at the survival level. A thousand dollars was
22 before the last two years. No telling what it is now.
23 Even in Israel, where it's been 16,000, it's down quite
24 a bit. But the disparity creates part of the
25 psychological environment. They can't understand that

1 we're used to doing this. I say we're used to doing
2 this. I have never asked for attorney's fees except as
3 a final award, and I've never asked for sanctions in 54
4 years, because I don't really believe that. I think a
5 gentleman can practice law (inaudible). I realize that
6 that's a point of view these days.

7 Another thing that's strange about it is, in
8 the real sense, the default has not added work, it's
9 reduced work. It will end the case quicker. It will
10 end it with a lot less expenditure. And we've never
11 understood why, after the date in February in which
12 this motion that we have before us today on failure to
13 answer, which began back in November of last year,
14 perhaps, perhaps December, addressing our failure to
15 answer, why it hadn't been brought on. And then the
16 triple path toward default. Now I just saw this thing
17 yesterday, their itemization of fees, and it didn't
18 appear to me immediately that it includes basic time,
19 or substantial time on the other two motions for
20 default, but that imposed work on us, you could say, on
21 the same related issue, that it imposed travel here.
22 We've been up here several times because of three
23 motions, whereas if it'd just been one motion for
24 default, which is all I've ever seen in a case, that
25 could have spared us that. But I think considering the

1 course of litigation, which has been long, but the
2 great bulk of the time was spent in reaching a decision
3 on who the plaintiffs were and who the defendants were.
4 The plaintiffs were cut in half and the defendants were
5 cut 9 to 2, discovery only began in November of last
6 year, and from a very early time, and certainly after I
7 was in Ramallah in mid-December, I was trying to make
8 it clear that the only thing we were going to be able
9 to do was seek to establish immunity because we could
10 not defend the case. And under those circumstances, I
11 think the award of attorney's fees for what's been
12 going on would be unfair.

13 THE COURT: Thank you, Mr. Clark.

14 MR. CLARK: Thank you, sir.

15 MR. STRACHMAN: May I respond?

16 THE COURT: Briefly, Mr. Strachman, yes.

17 MR. STRACHMAN: I'm sort of shocked, Judge,
18 to learn that the failure of the defendants to follow
19 the Court orders and to fight and to appeal every order
20 and to ask for protective orders and to seek to
21 reconsider discovery orders all following Mr. Clark's
22 communication with Mr. Araft, as he disclosed in April.
23 If he had taken a different course, if the defendants
24 had taken a different course, we might not have been
25 here. But the numerous hours that we've spent on this

1 case for the last 9 months were all caused because of
2 one party. We wrote the letter saying how can we
3 resolve the disputes. We took a month to do an order
4 following the December 12th hearing so that we could
5 negotiate virtually every single word, and to hear that
6 9 months later that this is, in a sense, the
7 plaintiffs' doing, and to add insult to injury, that
8 they've actually made it easier for us by defaulting,
9 is sort of shocking.

10 I would ask your Honor to rule on this
11 request either today, or to take it under advisement,
12 but to deal with it independent of the ultimate
13 decision in terms of a default judgment. I think it's
14 important to keep the record very clear as to the
15 occurrences in this case and to the attorney's fees as
16 a compensation or sanction for defendants' actions, and
17 to ensure that each of the issues are dealt with very
18 precisely to avoid any complications in the future.
19 Thank you.

20 THE COURT: You're suggesting, perhaps,
21 Mr. Strachman, that, hypothetically speaking, if I were
22 to issue a Report & Recommendation recommending that
23 default judgment enter in favor of the plaintiffs, it's
24 accepted by Judge Lagueux, then on appeal to the First
25 Circuit it were reversed, and attorney's fees had been

1 awarded as part of the default judgment, that the fact
2 that even apart from the reversal of the default
3 judgment, the Court made an independent determination
4 that you were entitled to attorney's fees in connection
5 with these discovery problems the plaintiffs
6 encountered, that that should be clear, that you'd at
7 least have that. Do you follow my analysis?

8 MR. STRACHMAN: I think you may have thought
9 it through a little more than I have, your Honor. But
10 what's concern to us, what's of concern to us, is that
11 the procedural morass of this case caused because of
12 all of these tactics and strategies and methodologies
13 used by the defendants have clogged this case up, and I
14 think it's just extremely important to be, for us, and
15 we've tried as much as possible, and that's why we
16 offered in terms of taking depositions or taking
17 testimony, to be very simplistic in a sense as to each
18 step along the way. Thank you.

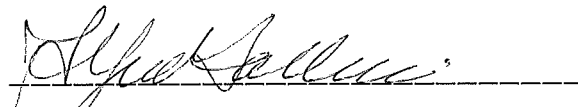
19 THE COURT: All right. Thank you,
20 Counsellor. All right. As I've indicated, the
21 plaintiffs, Mr. Strachman, has one week to file a
22 further response to the objection that the defendants
23 have filed to the plaintiffs' third motion for default
24 judgment. The defendants, one week thereafter, have
25 the Court's permission to file a reply to that

1 response, not to exceed 5 pages in length, exhibits not
2 to exceed 5 pages. Defendants are allowed to ask the
3 Court to exceed that limitation. I've indicated it
4 would take a lot to persuade me to authorize that
5 limitation to be exceeded. I will take these matters
6 under advisement. I will issue a single Report &
7 Recommendation which addresses all 3 pending motions
8 for entry of default judgment against defendants. I
9 will issue a separate opinion regarding the attorney's
10 fees. That will conclude the hearing. The Court will
11 stand in recess.

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C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Alfred Gallucci", is written over a horizontal line.

ALFRED GALLUCCI, COURT REPORTER